IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 309 OF 2005

Tata Finance Limited, ..Applicant.
office at Bezzola Complex, (Org.Complainant)
Chembur, Mumbai 400071.
through its Legal Adviser,
Rasheed Siddiqui, Age -30.

V/s.

1. The State of Maharashtra ..Respondents.

2. Birendersingh Bacchansingh Bala,
of Punjab Motors (Kurali) Ltd.,
B/22, Industrial Area I, Mohali
(Sector-57) Dist. Ropar, Punjab
and residing at Shergill Farm,
Post Rudki, Tal. Kharad, Dist. ..Respondent No.2.
Ropar (Punjab) (Org.Accused No.2)

Shri A.P.Mundargi with S.S. Parab for the Applicant.
Shri Ramrao Adik, Sr. Counsel with S.P.Kanuga for Respondent No.2.
Shri K.V. Saste, APP for Respondent No.1- State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 07,2005.

ORAL ORDER :-

1. Heard learned counsel for the parties.

2. This application under section 439(2) of the Cr.P.C. is for setting aside the order dated 11th January, 2005 passed by the lower court, releasing the Respondent No.2 on bail. The order reads thus:-

"Accused is released on furnishing surety Rs. 25,000/- or Cash, P.R.Bond of like amount. He shall attend police station on 12th date of every month during 10 to 12 noon for next three months.

sd/- 11/1/2005"

3. Both counsel, on instructions, state that no separate reasons have been recorded and the lower court has released the respondent No.2 only on the basis of the above quoted operative order. Needless to observe that reason is the soul of any decision reached by the courts. Moreso, when it is passed by the subordinate court and can be subjected to scrutiny before the superior court. And especially in bail matters, the subordinate courts are expected to record reasons which weighed with them for enlarging the accused on bail. The order which is questioned in this application is bereft of any reason and is only an operative order. Such order cannot stand the test of judicial scrutiny. It cannot be countenanced. Such order will have to be labelled as, to say the least, perverse. Therefore, the same is hereby set

aside.

4. The Respondent No.2 shall however, surrender before the court of Chief Metropolitan Magistrate, Mumbai on or before 15th February, 2005 after giving advance notice to the applicant as well as the investigating officer. The Chief Metropolitan Magistrate may either proceed to decide the application for bail, if filed by the Respondent No.2, himself, on the same day, or, assign it to some "other Judge" of his choice for being decided on merits in accordance with law, preferably on the same day.

5. The copy of this order be forwarded to the Registrar General for being placed before the appropriate authority in view of the observations made in respect of the impugned order.

6. It is once again made clear that the Chief Metropolitan Magistrate, Greater Mumbai or the concerned Judge nominated by him, as the case may be, shall decide the application for bail to be filed by the Respondent No.2 afresh on its own merits in accordance with law, uninfluenced by the order passed on this application.

7. Application is disposed of on the above terms.

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